THE HON'BLE SRI JUSTICE GODA RAGHURAM

AND

THE HON'BLE SRIJUSTICE M.VENKATESWARA REDDY

W.A. NO. 491 OF 2006

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% TUESDAY THE 9TH DAY OF MAY , TWO THOUSAND SIX

#Dr.K.Kishore Kumar son of Kd.Veera Brahmam and three others.

…Petitioners

vs.

$State of Andhra Pradesh, represented by its Principal Secretary, Health, Medical and Family Welfare Department, Hyderabad and two(2) others.

Respondents

Counsel for the Appellants : Mr.Nuty Rammohan Rao

^ Counsel for the respondents : The Advocate General for Respondent Nos.1 and 2

Mr.S.Niranjan Reddy for M.C.I

Mr.D.V.Nagarjuna Babu for respondent No.2

< Gist :

>Head Note:

? 1) AIR 2003 SC 2952

2. (1999) 7 SCC 120

3. (1994) 4 SCC 401

4. (1997) 6 SCC 283

5. (2001) 8 SCC 64

6. AIR 2003 SC 3371

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JUDGMENT: [Per Hon'ble Sri Justice G. Raghuram]

In an interlocutory order, a learned single Judge, by the order dated 26.4.2006 in WPMP No. 9577 of 2006 in Writ Petition No. 7467 of 2006 directed that the provisional admissions made by the 2nd respondent-University pursuant to the First phase of counseling, to Post -Graduate Medical Degree and Diploma Courses be not confirmed and for admissions to be made in the Second phase of counseling, the 2nd respondent should notify to the candidates to be admitted that their admissions are subject to the writ petition. The application for interim relief was directed to be posted after the summer recess of the court. Aggrieved, the writ petitioners have filed the appeal.

The appeal came up for admission hearing on 28.4.2006 and the learned Division Bench felt that having regard to the immediacy of the problem, the appeal along with the substantive writ petition be taken up during the (summer) vacation for final disposal.

This court has heard elaborate arguments in the appeal and the writ petition as well, on 3.4.2006 at a special sitting of the vacation Bench. Though we have heard counsel for the respective parties at length and rather comprehensively and could dispose of the writ petition itself, we have considered it appropriate that having regard to the importance of one of the issues involved (i.e. regarding addition of 5 moderation marks)), the views of the Medical Council of India (R-3 in the writ petition) should also be considered. The 3rd respondent has not filed a counter affidavit in the writ petition as yet. Further, on account of paucity of time in a vacation

Session, we are inclined for the nonce, to dispose of the appeal (directed against the interim order) while indicating the issues arising for consideration and recording brief reasons for the order in the appeal. The writ petition may be listed for hearing before the appropriate bench as directed by the Hon'ble the Chief Justice, immediately after the summer vacations.

The parties are referred to as arrayed in the writ petition.

The petitioners are all Doctors, qualified, internship completed and registered with the State Medical Council. They are desirous of pursuing Post Graduate Medical Courses. The 2nd respondent notified admissions (for the academic session 2006-2007) to the PG Degree and Diploma Courses for the current academic year. According to the schedule prescribed by the 2nd respondent – application forms will be issued up to 15.2.2006; last date for submission of applications is 16.2.2006; the date of the entrance examination is 25.2.2006; results are to be announced on 6.3.2006; the first counseling is on 16.3.2006; the last date for reporting to colleges is 1.4.2006; the date of the 2nd counseling is on 12.4.2006; last date for reporting to colleges after 2nd counseling is 26.4.2006; the commencement of classes is from 2.5.2006; and closure of admissions is on 31.5.2006.

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The entrance examination was conducted on 25-02-2006, the results announced on 05-03-2006 and exhibited on 06-03-2006. The first phase (stage) of counseling was initially scheduled to commence on 16-03-2006 but did so on 08-04-2006 and went on upto 09-04-2006. The 2nd stage of counseling is stated to have not yet commenced. Petitioners applied and appeared at the entrance examination.

The 1st petitioner belongs to the Osmania University Local Area (for short 'O.U. Local Area') (within the meaning of the expression as defined in The Andhra Pradesh Educational Institutions (Regulations of Admissions) Order, 1974 (Presidential Order (for short 'P.O.') and belongs to B.C-B category and secured

Rank No.6 in the overall merit ranking; the 2nd petitioner, who belongs to Sri Venkateshwara University Local Area (for short 'S.V. Local Area') and to the B.C-B category secured Rank No.44; the 3rd petitioner also belongs to the S.V. Local Area, belongs to B.C-D category and has secured Rank No.49; and the 4th petitioner, who belongs to OU Local Area, is a differently abled (Physically Challenged) person, does not belong to any reserved category and secured Rank No. 1078. At the first phase of counseling the petitioners secured admissions in M.D. General Medicine, Osmania Medical College; M.S. General Surgery, Kurnool Medical College, Kurnool; M.S. Orthopaedics, S.V. Medical College, Tirupathi and Diploma in Child Health, Osmania Medical College/Niloufer Hospital, Hyderabad, respectively.

The petitioners contend that the counseling procedure adopted by the 2nd respondent for regulating admissions to the Post Graduate Medical Courses is illegal, arbitrary and irrational and seek a Writ or direction, in the nature of Mandamus to:

i. Declare the action of the respondents No. 1 and 2 in regulating the admission process into post-graduate medical courses for the academic session 2006-07 by adopting and following the improperly designed roster system which has resulted in denying the right to seek admission into post-graduate medical courses based upon the merit ranking of the candidates and hence, as unconstitutional.

ii. Direct the respondents No. 1 and 2 to forthwith undertake the exercise of counseling properly to regulate the admissions into post-graduate courses for the academic session 2006-07 immediately so as to ensure that the post-graduate medical courses commence from 02-05-06;

iii. Further direct the 3rd respondent to fix the responsibility and accountability for the illegal exercise of admissions carried out into post-graduate medical courses in the State of Andhra Pradesh by following and adopting illegal procedure from 03-04-2006 onwards and direct action to be initiated against such person/persons;

iv. Direct the 2nd respondent to compensate each one of those students who are wrongfully denied admission into post-graduate medical

courses/institutions of their choice for the academic year 2006-07 by awarding exemplary cost of atleast Rs.10,000-00 to be paid to each of them and pass such order or further orders as are deemed fit and proper in the circumstances of the case.

As an interim measure, they seek suspension of the admissions process and directions to the 1st and 2nd respondents to undertake the counseling process properly, duly rectifying the errors pointed out (alleged) in the writ petition.

Though a number of grounds have been urged assailing the counseling and admissions process adopted by the 2nd respondent, at the hearing on 03-05-2006 before us, Sri Nooty Ram Mohan Rao, the learned counsel for the petitioners confined the challenge to a few aspects, hereinafter considered as issues A to D.

A. Earmarking first slots in the roster points in SC, ST and BC-A, B and D categories for Women Reservation:-

According to the petitioners initially for the previous academic year's Post Graduate Medical Admissions, the first point in the 100 point roster was earmarked for OC Women Category. This anomaly having been pointed out in a writ petition, in the previous year itself the roster point was altered and earmarked for Open General Category (unreserved and gender–neutral). However, the first slots in the roster points meant for SC, ST and BC-A, B and D categories continue to be earmarked for women candidates of the respective reserved categories. Consequently, the petitioner Nos. 1 to 3 who belongs to Backward Classes have been denied the right to compete against the first slot in the respective backward classes categories in the roster. For in-service candidates however in the respective categories of OC, BCs, SC and ST, the first slots are not reserved for women and the in-service doctors belonging to the respective categories could compete for admission to the first slot of the respective categories on the basis of their merit ranking. There is thus a discrimination employed by the 1st and 2nd respondents as between in-service candidates and others in the matter of earmarking the first slots in the roster, earmarked for SC, ST and BC-A, B and D categories.

(B) Adding of marks

The 2nd respondent on its own decided to add five (5) moderation marks to all

candidates at the Post-graduate Entrance Examination, lowering the minimum standards fixed by the 3rd respondent. Further the officials of the 2nd respondent without reference either to the Executive Council or the Academic Council of the University added 4th and 3rd marks respectively for students who had answered the question papers of set-A; and sets-B, C & D respectively, on an assumption that the answers furnished (4 questions in set-A and 3 questions each in sets-B, C & and D respectively) are either inaccurate, incorrect or ambiguous. The P.G. Medical Entrance Test being a competitive examination and not a mere qualifying examination, each mark secured by a candidate at the entrance examination assumes considerable importance, as *inter se* merit ranking is determined thereby. The addition of marks is illegal since the 200 questions in all the four (4) sets are identical though in each set the several questions are arrayed in a different order.

C.Discrimination against the differently abled:

3% of the seats in P.G. Degree and Diploma Courses are reserved for the differently abled candidates which are in the nature of horizantal (inter-locking) reservations. The 2006 Rules mandate that " the 100 point roster as available in Rule.22 (e) of the A.P. State and Subordinate Service Rules, 1996 (the 1996 Rules) shall be applied *mutatis mutandis*, except changing the first point to the 3rd point and vice-versa for the purpose of calling candidates for counseling. While so, in subversion of the above statutory mandate (Rule.1(II)(i) of the 2006 Rules read with Rule.22(e) proviso ii of the 1996 Rules), within the first 100 roster points only two slots i.e., 31 and 92; in the next 100 roster points, three slots i.e., 101, 156, 181; in the 3rd 100 roster points, five slots i.e., 215,229,243,275 and 276; and in the 4th cycle of 100 roster points two slots i.e., 327 and 338, have been set apart for being filled up by the differently abled candidates. Proviso ii of Rule 22(e) of the 1996 Rules mandates that " ***the 6th, 31st and 56th turns in each unit of 100 vacancies shall be allotted to the physically handicapped persons and where qualified and suitable candidates are not available from among physically handicapped persons, the turn allotted for them in the unit referred to above shall be carried forward for three succeeding recruitment years and the reservation for these vacancies shall cease***

thereafter" The counseling and admission process adopted by the 2nd respondent is *ultra vires* the provisions of the 2006 Rules read with the relevant provisions of the 1996 Rules; adversely impacts candidates belonging to the differently abled category; and as a result the 4th petitioner (a differently abled person) has lost the benefit of securing admission either in M.D (General Medicine) or Paediatrics Course. These courses, which are normally available within the first 100 slots of the cyclic order. The 4th respondent was therefore constrained to opt for the two year Diploma Course in Child Health.

D. *Violation of the Presidential Order:*

Under the Presidential Order, 85% of the seats available in all educational institutions receiving aid or controlled by the State shall be filled exclusively by local candidates belonging to the O.U, A.U and S.V.U local areas. Even in respect of State-wide courses and seats available in State-Wide institutions, 85% of the seats must be filled by local candidates, the distinction being that the state-wide courses and seats in state-wide institutions to the extent of 85% must be offered proportionately in the ratio of 45:36:22 to the local candidates of A.U,O.U and S.V.U, local areas. A separate roster must therefore be maintained for regulating the admissions process for 85% local candidates. The balance 15% of the seats must be filled exclusively on the basis of merit ranking of the candidate and a separate roster must be prepared and maintained therefor. The 2nd respondent has not done so to the prejudice of the local area candidates. At the commencement of the first phase of the counseling (from 04-03-2006) since the first slot must be filled by an Open General category candidate, the first three rankers (belonging to the three local areas, A.U, O.U & S.V.U) were called to the counseling hall. As incidentally the first two merit rankers happened to belong to the S.V.U local area and 3rd ranker to the O.U local area, the first ranker exercised his option to be admitted against the 15% un-reserved seats available in the O.U area. He obtained admission to MD-Radio diagnosis Course in the O.U. Since there are four available seats and in the O.U local area for this course only one of them is available for the unreserved segment (15% under the Presidential Order). Though the 2nd ranker was also eligible to secure admission against 15% un-reserved segment in the seats available in the O.U local area, he was denied such a benefit on the ground that the first ranker had taken up the unreserved seat. Since in several other Post-graduate

Degree Courses such as MD(General Medicine), Paediatrics, MS(General Surgery) and Orthopedics etc., more than four seats are available in the Osmania Medical College, Hyderabad alone, the 2nd ranker was entitled to claim admission into any of those courses against the 15% un-reserved segment though he was a local candidate of the S.V.U local area. The 2nd respondent, however at the counseling process, illegally denied admission to the 2nd ranker in the 15% un-reserved segment in other courses like General Medicine, Paediatrics etc.,. The 3rd ranker this year hails from O.U local area. He was denied admission in the available seats in the O.U Local area on the ground that the first slot, an O.C slot in the O.U local area, had been taken up by the first ranker. Since Dr.Ravi Kant the 3rd merit ranker was the first merit rank holder amongst the local candidates of the O.U local area and despite 85% of the seats in all Post-graduate courses in the OU Local area being reserved to be filled up by the O.U local candidates, Dr.Ravikant ought to have been permitted to choose any of the available 85% of the seats reserved for the local candidates of the OU local area but was asked to wait for staking his claim till the 11th slot in the roster came up for consideration. As a consequence the remaining three seats in the MD(Radio diagnosis) course in the OU area (allocable to the 85% reserved for local candidates of OU local area) were exhausted by the time Dr.Ravikant was permitted to stake his claim at the 11th slot in the roster. Dr Ravikant, left with no alternative had to accept MD(General Medicine) in the OU for the academic session 2006-2007.

Responding, the learned Advocate General for the State of Andhra Pradesh appearing for the respondent Nos. 1 and 2 has marshalled the defence on behalf of these defendants. On behalf of the 2nd respondent two counter affidavits are filed – one on 23-04-2006 and the other on 02-05-2006.

ISSUE-A:

Regarding issue-A, the counter affidavit dated 23-04-2006 states that as the 2006 Rules direct the 100 per cent (roster specified in Rule 22 (e) of the 1996 Rules) to be applied *mutatis mutandis* except for changing the 1st roster point to the 3rd and *vice versa*, for the purpose of calling the candidates for counseling the roster has strictly been followed. As the conduct of the University is consistent with the 2006 Rules, there is no illegality. In the additional counter affidavit filed on 02-05-2006, the 2nd

respondent pleads that the petitioners have no *locus standi* on this issue; the petitioner Nos. 2 and 3 are not the top rankers in their respective categories in their respective university local areas; though the 1st petitioner is the top ranker in his category i.e., BC-B in the OU Local Area, he did not suffer any disadvantage, as BC-B (Women) i.e., at the 10th slot in the O.U Local Area opted for M.D (Pediatrics) in the O.U Local Area and when the petitioner No.1 was called as an O.C. candidate at the 13th slot, though he belongs to BC-B category he opted for MD (General Medicine), despite availability of a M.D. (Pediatrics) seat in the OU Local Area at that point. Consequently the available M.D (Pediatrics) seat was picked by a BC-B candidate at the 24th roster point with Rank No. 25. Thus, the petitioners were neither prejudiced nor affected and this question raised by them is merely academic.

Prima facie, this court is not inclined to countenance this challenge of the petitioners and for a plurality of reasons. **Firstly**, the petitioners have not challenged the validity of any of the provisions of the 2006 Rules; the 2006 Rules mandate that 100 point roster set out under Rule 22 (e) of the 1996 Rules should be followed *mutatis mutandis* except for substituting the roster point No.1 with 3 and *vice versa*. The first slots in each of the categories of SC, ST and BC-A, B and D are earmarked for women reservation in the 100 point roster under Rule 22 (e) of the 1996 Rules; **Secondly,** none of the petitioners have established how they have in fact been affected by setting apart the first slot for reservation in favour women candidates. The 2nd respondent's counter has pointed out that the petitioners have not been prejudiced and the petitioners do not combat this factual assertion of the 2nd respondent; **Thirdly**, providing reservation for women is a legitimate policy choice by the State. Once the power to make the choice and the legitimacy of such choice is conceded, integral to the affirmative action of the State (in favour of women) is the discretion to consciously opt for a policy detail that provides a primacy of choice (in each of the categories – SC, ST, BC – A, B and D) for women on an assumption that women belonging these categories suffer a greater backwardness component which requires to be addressed. The aggravated backwardness status of women belonging to SC, ST, and OBC's is not contested either in the pleadings or in oral argument. This challenge by the petitioners does not therefore commend acceptance by this Court.

ISSUE-B:

Responding to the challenge regarding the addition of marks, the 2nd respondent's counter dated 23-04-2006 admits that both, the regulations for admission to Post Graduate Medical Courses and Rule 9 of the Post Graduate Medical Education Rules, 2000 (issued by the 3rd respondent) mandate that the minimum percentage of marks to be secured for eligibility for admission to Post Graduate Medical Courses is 50% for General Category candidates and 40% for those belonging to SC, ST and Other Backward Classes. On factual aspects, this counter states that in order to avoid copying at the entrance examination, four sets of question papers (A, B, C and D series) were prepared by jumbling the questions and questions are common in all the series of question papers. Three common questions were deleted as they were found to be defective and in the 'A' series question papers, a printing mistake was noticed in respect of one question as regards the multiple answers provided and, therefore this question was additionally deleted in the 'A' series question paper. Thus four questions in 'A' series and three questions in B, C and D series question papers were deleted. Therefore, four marks were added to candidates who answered the 'A' series question paper and three marks to candidates who answered the B, C and D series question papers. According to the counter, this is the regular practice in all entrance examinations conducted by the 2nd respondent. Regarding the other aspects i.e. of adding five (5) marks to all candidates, the counter affidavit states as under:

"At the end of evaluation, it was found that only 42% (1,819 out of 4,349) of the candidates secured 50% (in respect of SC/ST 40%) and more marks. The marks obtained by them are ranging between 50 to 156 out of 200. The matter was discussed by the valuation committee and in response thereto, the University decided to add 5 marks to all candidates uniformly. In the previous years, more than 50% of the candidates got qualified and this year only 42% candidates are qualified. The details of the previous year are as under:

YEAR	*% OF QUALIFIED CANDIDATES*
2001	*79.59%*
2002	*63.41%*
2003	*81.41%*
2004	*74.18%*
2005	*50.87%*
2006	*40.71%*

In view of the fact that there is a drastic fall in the percentage of qualified candidates and also anticipating that there is a possibility of some seats going unfilled, it was decided to add five (5) marks to all the candidates whereby the total qualified candidates became 2193 (50.04%).

Further, as it was brought to the notice of the University by the members of the valuation committee that the question paper is tough and the number of candidates being qualified is likely to be less, the above said decision was taken to add 5 marks to all the candidates. The above policy decision has been taken by the Vice Chancellor, who is empowered under Section 12 of the Dr. N.T.R. University of Health Sciences Act, 1986, to take such decisions in case of contingent situations. Further, the decision taken by the Vice Chancellor was placed before the Executive Council in the meeting held on 17-04-2006 and the Executive Council has approved the same.

The allegation that the addition of marks is done with an intention to benefit the service candidates only is incorrect and baseless, since, no discrimination was done in adding the marks. The marks were added uniformly to all the candidates irrespective of the category to which they belong. The decision taken by the University is in good faith. The same does not amount to lowering of the minimum qualifying marks prescribed by the Medical Council of India in as much as the power to conduct the Entrance Test vests with the University and in view of tough setting of the question paper, bonafidely a policy decision has been taken to add 5 marks to all the candidates. The said academic policy is in the larger interest of the student community and in order to save the seats going unfilled which has the effect of wasting the infrastructural facilities provided by the State Government. In this connection, it may not be out of place to mention that in most of the Government Teaching Medical Colleges, number of Assistant Professor Posts are vacant on account of non-availability of Doctors with Post Graduation Qualifications. If large number of Post Graduate Seats remain unfilled, the position in future will become more worse. Therefore, no body is discriminated and accordingly, there is no infirmity in the admission process as alleged by the petitioner.

More over, by the addition of 5 grace marks to all the candidates, the petitioners are not affected in any manner in as much as even by virtue of the addition of marks, ranks up to 1500 remain unchanged. Admittedly, all the petitioners have got ranks below 1500 and therefore, they cannot have any grievance. During the first phase of counseling, 80 candidates (both service and non-service) got admissions on account of addition of 5 grace

marks. Out of them, 52 are service and 28 are non-service candidates."

To summarise, the stand of the 2nd respondent is:

a. This year a low percentage of students (42%) secured the qualifying marks for admission compared to previous years;

b. As a result of the drastic fall in the percentage of qualified candidates, P.G. Medical seats would remain unfilled and infrastructural facilities provided will become unproductive;

c. A member of the valuation committee opined that the question paper was tough and the number of qualified candidates would be low;

d. Several faculty positions in Government Medical Colleges are unfilled for dearth of qualified doctors with P.G.qualifications. If a large number of seats remain unfilled this position will worsen;

e. The decision is taken in the larger interest of the student community, bonafide, by the Vice Chancellor of the 2nd respondent and in accordance with the vested power under Sec.12 of Dr.N.T.R. University of Health Sciences Act, 1986 (the 1986 Act); and

f. On facts, with the addition of the " 5 grace marks" 52 in-service and 28 non-service candidates obtained admissions, in the 1st phase of counselling itself.

The writ petition was filed on 13-04-2006 and came up for admission on 17-04-2006. On 17-04-2006 it was adjourned to 26-04-2006 and on the said date was admitted and the order impugned in the appeal passed, in W.P.M.P.No.9577 of 2006. In paragraph 3 (j to l) of the writ petition, the allegation regarding the adding of 5 moderation marks to all students and 4 & 3 marks respectively for students who had answered the question paper in Set-A on the one hand and Sets-B to D on the other, is pleaded. It is also alleged that the officials of the 2nd respondent-University had on their own decided to add moderation marks without reference to either the Executive Council or the Academic Council.

In the counter-affidavit dated.23-04-2006 the 2nd respondent states that after the members of the valuation committee brought to the notice of the University that the question paper was tough and the number of qualified candidates is likely to be low, the Vice-Chancellor took a decision under Sec.12 of the 1986 Act to add five(5) marks to all the candidates and that the said decision was placed before the Executive Council in the meeting held on 17-04-2006 whereat the decision of the

Vice-Chancellor was approved.

The learned Advocate-General has placed, for the perusal of this Bench, a copy of the notice` convening the 162nd meeting of the Executive Council (emergency), dated.16-04-2006 wherein the singular agenda was " to ratify the action of the university in granting five (5) marks to all the candidates who appeared for P.G. Medical Entrance Test-2006-07, so as to avoid wastage of seats". The emergency meeting of the Executive Council held on 17-04-2006 ratified the decision taken by the University to (a) add four marks in Group-A and three marks to Groups-B,C & D candidates; and (b) to add five(5) marks to all the candidates who appeared for the P.G. Entrance Test.

The material produced for the perusal of this Court by the learned Advocate General includes a statement showing the questions, which were deleted and the reasons therefor. Question Nos.26,107 and 151 [in the A series question paper] were common to all four series (A to D)]. Their numbers in other series – B to D are however different. Question No.26 was wrongly framed and therefore deleted. A printing mistake occurred in the key-answer in respect of question No.107. Question No.151 was ambiguous – i.e.. having more than one correct answer. Therefore these questions were deleted from all the four(4) sets of question papers. In question No.135 there was a printing mistake as to the key answer, only in the A series question paper. Therefore this question was deleted in respect of A series. Thus for the A series question papers, four questions had to be deleted and for B to D series three questions. Proportionate marks were added at the valuation stage itself.

On behalf of the petitioners it is contended that instead of adding marks, the correct approach would have been to value the answer papers totally deleting 4 and 3 questions and reducing the total value of the question paper by as many marks, as each question carried one mark. According to the petitioners A series question paper ought to have been valued for 196 marks instead of 200 and B to D series for 197 marks.

`In the considered view of this Court the above contention does not merit acceptance. It is clear that there was an error in the question papers as discussed above. As A series question paper incorporated an error in respect of four questions while B to D series question papers contained three erroneous questions and since the test is a common entrance test, it would not be possible to evaluate A series

question paper for 196 marks while evaluating B C & D question papers for 197 marks each. That would have rendered it an uncommon entrance test. The decision taken by the University as ratified by the Executive Council on 17-04-2006 falls within the spectrum of available legitimate choices. It is not the province of this Court to speculate if a better solution was available. The solution identified by the University for the problem is to add four and three marks respectively to all the candidates. No solution could be perfect. In the circumstances, the solution identified by the University is not perverse and no case is made out for declaring it illegal.

Section 10 in Chapter-III of the 1986 Act enumerates the Officers of the University. The Vice-Chancellor is an enumerated officer. Section 12(2) declares the Vice-Chancellor to be the principal executive and academic officer of the University, empowered to exercise general supervision and control over the affairs of the University. Sub-section.3 of Sec.12 confers power on the Vice-Chancellor, if he is of the opinion that immediate action is necessary on any matter, to exercise any power conferred on any authority of the University by or under the Act. The Vice-Chancellor is however required to report to such authority, the action taken by him. Sec.18 enumerates the authorities of the University, which include the Executive Council and the Academic Council. Section.19 enumerates the powers and functions of the Executive Council and delineates the Executive Council to be the Principal executive body of the University. Sec.20 enacts that the Academic Council shall be the Principal Academic body of the University and shall subject to the provisions of the Act, the Statutes and Ordinances, co-ordinate and exercise general supervision over the academic policies of the University.

Sri Ram Mohan Rao has urged that though the decision to award marks could perhaps have been taken by the Vice-Chancellor under Sec.12 (3) of the Act, he was required to report to the Academic Council rather than have the decision ratified by the Executive Council, since under Sec.20 of the Act the Academic Council is the Principal academic body of the University empowered to coordinate and exercise general supervision over the academic policies of the University. Since identification of wrong questions or answers or adding of marks for that purpose is an intrinsically academic issue, the Academic Council ought to have been taken into confidence as required under Sec.12(3) read with Sec.20 of the 1986 Act, is the contention on

behalf of the petitioners. It is also contended that even the first Statutes of the University do not confer any power on the Executive Council to take a decision regarding the correctness of the question paper or adding of marks either for an erroneous question paper or as a measure of moderation(vide-Statute-5-II schedule). Under Statute-8 of the 1st Statutes, which defines the power and functions of the Academic Council, the Academic Council is empowered to make regulations regarding the admission of students to the University; and prescribing the manner in which exemptions relating to admission of students to examinations may be given [vide Statute-8(e)&(i)]. On text and sub-text, the Executive Council is incompetent, is the petitioners case.

As this appeal arises from an interlocutory order, we are not inclined to analyze this question regarding the validity of the jurisdiction exercised by the Vice-Chancellor and whether the ratification of the Vice-chancellor's decision by the Executive Council vide the resolution of the Executive Council meeting dated 17-04-2006, is valid, at greater depth. The detailed examination of this aspect may await the hearing of the writ petition. *Prima face* under Sec.12 (2) of the Act the Vice-Chancellor is the Principal Academic Officer of the University and sub-Sec.3 thereof confers (on the Vice-Chancellor) power to exercise any of the functions conferred on any authority of the University by or under the Act, if he is satisfied that immediate action is necessary. Having regard to the fact that a stringent time frame is prescribed for completing Post-graduate medical admissions, there was certainly an emergency on hand and the Vice-Chancellor was empowered to take a decision under Sec.12(3) of the Act. Which authority he should have reported to thereafter; which authority was competent to ratify such action; whether ratification was necessary at all; whether mere reporting (by the Vice-Chancellor) to a specified authority was adequate; and what would be the consequences, either of not reporting or of ratification by an incompetent authority (on the emergency decision already taken), are questions which can await a detailed analysis at the final hearing.

To conclude on this aspect of Issue-B, we are prima facie of the view that adding of four marks to candidates who opted to answer the A series question paper and adding of three marks to candidates who opted to answer B,C & D series question papers, does not appear to be a fatal error warranting interference by this Court.

The other aspect of this issue is regarding the validity of the decision to add five marks across the board and to all the candidates. For reasons alike as recorded in the immediately preceding paragraphs we are not inclined to go into this area at this stage of the matter, i.e., the question whether the Vice-Chancellor's decision was incompetent or that the decision could not have been legitimately ratified by the Executive Council.

The residuary question on this aspect is whether the decision to add five marks suffers from any substantial error such as transgression of the minimum standards mandated by the Medical Council of India or the decision is *per se* irrational and therefore invalid.

From the material placed before us by the 2nd respondent, by the learned Advocate General, we find that the total number of candidates registered for the P.G.Medical Entrance Examination-2006-07 is 4,468/-; five(5) candidates were rejected by the Osmania Medical University; 114 remained absent and 4,349 attended. After the addition of five(5) marks to all the candidates and four marks and three marks to such of those candidates who answered the question paper in series-A and those who answered the question papers in series B,C & D respectively, the number of qualified candidates stood at 2,193. It also appears from the record that the addition of four and three marks was done at the valuation level itself, on an asserted standard practice (where certain questions are incorrect, answers are incorrect, questions are ambiguous or more than one correct answer is available in the format). One retired professor addressed the Vice-Chancellor on 28-02-2006 stating that the question paper is very tough and other experts in the concerned specialties who happened to set the key were also of similar opinion. He recommended grant of some moderation to all the candidates.

From the counter-affidavit dated.23-04-2006, it is clear that had five (5) grace marks not been added, 1819 out of the total 4,349 candidates who appeared for the P.G.Medical admissions would have qualified, including reserved category candidates who are required to secure the minimum 40% marks. By adding five (5) marks, 2,193 candidates became eligible. The counter-affidavit states that without the moderation marks only 42% candidates would be qualified and by adding the five(5) marks 50.4% became qualified. The counter-affidavit does not specify why 50% of the candidates must qualified and whether it is a statistical goal. The total

number of seats available to be filled up are stated to be in the order of 904. Even without adding five (5) marks, 1,819 candidates or twice the number of available seats, qualified.

On behalf of the 2nd respondent-University a table has been prepared showing the number of candidates who qualify even without adding five (5) marks and the number who qualify after adding the five (5) marks. In the unreserved category 775 candidates without addition of marks and 901 after the addition of five (5) marks; Backward classes 549 and 678; Scheduled Castes 377 and 459; Scheduled Tribes 118 and 155, respectively would qualify. While 264 in-service candidates would alone qualify without addition of marks, 382 qualify on addition of the five(5) marks.

It is stated on behalf of the petitioners that the approximate number of seats available sector-wise would be O.C.-486; B.Cs.227; S.C.145; S.T.54; and in-service candidates 350. This statement made on behalf of the petitioners at the Bar has not been contested. From the above, it is apparent that twice or more number of candidates qualified amongst O.Cs, B.Cs, SCs and STs than the number of seats available for those categories. It is only in the case of in-service candidates that as against approximately 300 seats available (to this category), only 264 qualified, a shortfall of 96 candidates.

The petitioners' contention that the addition of five (5) marks was devised exclusively to qualify unqualified in-service doctors to artificially render them eligible for admission to Post-graduate Medical Courses, thus appears statistically established. In respect of all other sectors, the number of qualified candidates were much more than the available number of seats.

The learned Advocate-General contended that since five(5) marks were added to all candidates no prejudice is caused. He also reiterated the 2nd respondent's averments in the counter that seats remaining unfilled would lead to unproductivity of provided infrastructural facilities and unfilled seats, in particular those earmarked for in-service doctors would result in critical shortfall of faculty in Government Medical Colleges which are already reeling under a similar problem. It is therefore in public interest that the seats meant for in-service doctors should not remain unfilled, is the thrust of the argument on behalf of the respondents 1 and 2.

We will deal with the legal aspect of this question, as we must. Conceptually and on

first principles however, the arguments on behalf of the respondents 1 and 2 deserve to be rejected. P.G.Medical studies have a vital impact on the health of all citizens and people. Post-graduate Doctors are a National asset and not merely of a particular State. It is for this reason that determination of the standards of medical education and post-graduate medical education no less, is a subject appropriated under our constitutional scheme, to federal regulation and under the provisions of the Indian Medical Council Act,1956 consecrated to specification and determination by that expert body-the Medical Council of India. Filling up of vacant seats in Post-graduate Medical Courses or filling of vacant faculty positions in Government or private medical colleges cannot rationally be achieved by lowering the standards. Mere quantitative provision of medical education and of medical services to the citizens would be a myopic act of insanity, deleterious to the State's affirmative obligation to provide or ensure the provision of adequate medical facilities to the citizens, subversive in the immediate as well as the long term health of the citizens and in any event productive of disastrous consequences.

Grace marks and the Medical Council of India:

Now to an analysis whether the moderation exercise of providing 5 marks is legal and permissible. The 3rd respondent framed the Postgraduate Medical Education Regulations 2000 (the 2000 regulations). These regulations became operational with effect from 20-09-2001. Regulation.9 of the 2000 regulations is relevant for our purpose and reads as under:-

9.SELECTION OF POSTGRADUATE STUDENTS.

1. Students for Postgraduate medical courses shall be selected strictly on the basis of their academic merit.

2. For determining the academic merit, the university/institution may adopt any one of the following procedures both for degree and diploma courses:-

   i. On the basis of merit as determined by the competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the university/group of universities in the same State; or

   ii. On the basis of merit as determined by a centralized competitive test held at the national level; or

   iii. On the basis of the individual cumulative performance at the first, second and their MBBS examination, if such examination have been passed from the same university; or

iv. Combination of (i) and (iii)

Provided that wherever entrance test for Postgraduate admission is held by the State Government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical courses shall be fifty percent for general category candidates and 40 per cent for the candidate belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes.(emphasis added)

Provided further that in non-Governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty per cent by the management of the institution on the basis of merit.

Earlier to 20-09-2001, the first proviso to Regulation.9 prescribed the minimum percentage of marks for eligibility as 50%, uniformly for all categories of candidates. I n **State of Madhya Pradesh Vs. Gopal D.Tirthani(),** the applicability of the Regulations 2000 in the context of the Madhya Pradesh Medical and Dental Postgraduate Admission (in-service) Rules,2002 (M.P.Rules 2002) came to be considered. *Inter alia* 20% of the seats were allocated to in-service candidates and a separate and limited examination was required to be held for in-service candidates while there was a separate entrance test prescribed for other candidates. The M.P.Rules-2002 also provided for giving weightage in marks (a) 30% marks on the basis of individual performance at the 1st, 2nd and 3rd M.B.B.S examination, (b) 30% marks on the basis of length of service in the rural/tribal areas; and (c) 40% marks on the basis of a written examination conducted by the M.P.Professional Examination Board by a separate and limited examination confined to in-service candidates. The Supreme Court, relying on earlier judgments in ***Dr.Preeti Srivastava and another Vs. State of M.P and others(), Ajay Kumar Singh and others Vs. State of Bihar and others(); and Post-Graduate Institute of Medical Education and Research, Chandigarh and others Vs.K.L.Narasimhan(),*** reiterated the principle that attaining the minimum qualifying marks has a direct relation with the standards of education, that prescription of qualifying marks is for the assessment of the caliber of the student chosen for admission and if the students are of a high caliber, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the caliber of the students is poor or they are unable to follow the instructions being imparted, pointed out the Supreme Court, the standard of teaching necessarily has to be lowered to make them understand the course, which they have undertaken. Therefore the assemblage of students in a

particular class should be within a reasonable range of variable caliber and intelligence otherwise students will not be able to move along with each other as a common class. The Supreme Court pointed out that there is thus a need for a common entrance test and minimum qualifying marks as determined by experts in the field of medical education. Reiterating the principle enunciated in **State of Punjab Vs. Dayanand Medical College and Hospital and others()** the Supreme Court concluded that it is not open to the University or the Government to dilute the standards fixed by the regulations of the Medical Council of India. Even if the State or the University encountered any difficulty or inconvenience the only course open to them is to approach the Medical Council of India for reconsidering the standards insofar as in-service Doctors are concerned but the State cannot unilaterally frame the scheme reducing the standards in violation of the terms of the regulations framed by the Medical Council of India, since it is the Medical Council that is the repository of the power to prescribe standards in post-graduate studies, subject however to the control of the Central Government as envisaged in the Indian Medical Council Act,1956. Dealing with the argument that the in-service candidates having been away from academics and theories on account of their employment cannot compete with fresh medical graduates, the Supreme Court held that in view of the Regulations-2000 failing to make any distinction between in-service doctors and others in the matter of competing for Postgraduate medical admissions, the in-service doctors " *must either keep updating themselves regularly or concentrate on studies preparatory to entrance examinations but without sacrificing or compromising with their obligations to the people whom they are meant to serve on account of being in State Services"* . The Supreme Court categorically held that the State was not justified in holding and conducting a separate entrance test nor in having lower standards for evaluation of the candidature of in-service Doctors for admission to Postgraduate courses.

The issue of in-service doctors again cropped up for consideration in **Harish Varma and others Vs. Ajay Srivastava and another().** When the University of Rajasthan initiated the process of holding an entrance examination for Postgraduate medical admissions in 2002 after coming into force of the Regulations-2000, several in-service doctors filed writ petitions challenging the validity of the first proviso to Regulation.9 of the Regulations-2000 and in the alternative sought a declaration that the said provisions were inapplicable to in-service candidates. A Full Bench of the Rajasthan High Court held that the regulations framed by the Medical Council of

India have only a persuasive value, are not binding on the State Government and the State has the power to prescribe a lower percentage of marks for in-service candidates. The Full Bench also held that Regulation.9 does not apply to in-service candidates while observing that the minimum qualifying marks for in-service candidates should not be grossly disproportionate to the marks prescribed for general category candidates. Reiterating the principles laid down in ***Dr.Preeti Srivastava (2nd supra) and*** **Gopal D.Tirthani(1st supra)** the Supreme Court held that the decision of the Rajasthan Full Bench, having been rendered in ignorance of the binding law laid down by the Supreme Court in ***Dr.Preeti Srivastava (2nd supra)*** and also being inconsistent with the decision in **Gopal D.Tirthani(1st supra)** is liable to be set aside. Consequently the Supreme Court struck down the admissions granted to such of the in-service candidates who secured marks lower than the minimum prescribed by Regulation.9 of the 2000 Regulations. The Supreme Court observed that if the State has a case for seeking a departure from the standards laid down by the Medical Council of India or for carving out an exception in favour of any identifiable class or person then it is for the State to represent to the Central Government and / or the Medical Council of India and make out a case of justification to those authorities.

From the aforesaid two decisions which have also analyzed the earlier authorities on this aspect in extenso, it is clear that any action of the State or a University which has the clear consequence of lowering the standards prescribed by the Medical Council of India by regulations would be illegal, beyond the power of the State or the University and unenforceable. In the present case also the Regulations-2000 prescribed the minimum qualifying marks for admission to P.G.Medical Courses. Though the Medical Council of India has not prescribed the format for setting the question paper for Post-Graduate Medical Admissions, it is nobody's case, not even of the respondents 1 and 2 that the one or some or all the questions prescribed for the P.G.Entrance Test 2006-07 were either beyond the syllabus or outside range of permissible assessment of performance in relation to candidates appearing for Post-graduate Medical admissions. A vague statement is made that the question paper was tough and the statement is based on the letter addressed by one Professor. The fact of the matter is that on the identical question paper 1,819 candidates out of a total of 4,349 who attended the entrance test qualified even without adding of marks, an impressive 42%. Thus 42% of the candidates did not find the question papers "

tough". As earlier noticed in this judgment except for the in-service candidates, candidates belonging to other sectors including the Scheduled Castes, Scheduled Tribes and Backward Classes, many more than the available number of seats had qualified even without the need for adding the grace marks. The conclusion is thus compelling and irresistible that the decision to add five marks by way of grace or moderation is taken only to artificially boost up the number of qualified in-service Doctors. This action of the 2nd respondent is a camouflage to achieve the same goal as of the State of Madhya Pradesh in **Gopal D.Tirthani's case (1st supra)** and of the State of Rajasthan in **Harish Varma's case(6th supra).** In both circumstances the Supreme Court rejected the stand of the respective States and invalidated the State action.

The decision to award 5 marks is based on no legitimate factual basis that justify a distinction from the facts considered by the Supreme Court in **Gopal D.Tirthani's case (1st supra) and Harish Varma's case (6th supra).** The adding of 5 marks clearly amounts to transgression of the first proviso to Regulation.9 of the Regulations 2000 framed by the Medical Council of India.

Issue-C:

The 2006 Rules mandate that the 100 point roster as per Rule.22(e) of the 1996 rules shall be applied ***mutatis mutandis*** except changing the first point to the 3rd point and *vice versa* for the purpose of calling candidates for counselling. Proviso.ii to Rule.22(e) of the 1996 Rules mandates that the 6th, 31st and 56th turns in each unit of 100 vacancies shall be allotted to physically handicapped persons. This has clearly not been done in the present admissions programme. In the 2nd respondent's counter-affidavit dated.23-04-2006 it is merely pleaded that since 3% reservation for the physically handicapped is specified to be horizontal in the 2006 rules; since reservation of 3% for the physically handicapped has been upheld by the Full Bench of this Court in **Md.Abdul Azeez Asad Vs. State of Andhra Pradesh and others();** and in view of clarifications from the Government, horizontal reservation of 3% in the roster has been provided for the physically handicapped in each category. The counter-affidavit also states that the number of points provided in each University area under P.H.category is: A.U.Area—10, O.U.Area—13 and S.V.U. Area - 4; total-

27. In paragraph.10 of the additional counter-affidavit dated.02-05-2006 the 2nd respondent states that 27 roster points were earmarked for the physically handicapped as against the available 904 seats and that there were only 8 physical handicapped candidates who opted for seats and obtained admission; the 4th petitioner being one such. The 4th petitioner is not seeking admission to the Postgraduate Course under the differently abled quota, as a measure of favour. Were the 4th petitioner even to seek such a favour, it is not within the province of this Court to grant it. The 4th petitioner assails the counselling and admissions procedure adopted as *ultra vires* the provisions of the 2006 Rules read with the provisions of the 1996 Rules. We have seen that under the mandatory statutory dispensation the 6th, 31st and 56th turns in each unit of 100 vacancies, in the roster prescribed under Rule.22(e) of the 1996 Rules as adopted by the 2006 Rules are mandated to be reserved for allotment to physically handicapped persons. The respondents 1 and 2 are bound by these statutory rules. They have no discretion otherwise. Therefore the failure to earmark the 6th, 31st and 56th points in every roster cycle, in favour of the physically handicapped, is an illegality, a transgression of the statutory mandate.

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Issue-D:

Responding to the allegation of the petitioners on this issue the 2nd respondent's first counter states that the 2nd ranker Dr.Ravikant is not aggrieved and is not before this Court. It is further stated that though M.D.(Radio diagnosis) seats were available in the A.U. and S.V.U local areas, which are also in Government colleges, Dr.Ravikant chose to wait and opted for M.D.(General Medicine) in a seat available in the O.U local area. In the additional counter-affidavit, the 2nd respondent states that four rosters are similarly maintained, one for each of the university areas and one for State-wide institution-seats. It is further stated that the petitioners' allegations regarding the 2nd ranker are also untenable. The said individual opted for M.D. (General Medicine) in the 5th slot in the O.U area roster. As the first ranker had opted

for the O.U area roster in the un-reserved block, the 2nd ranker cannot be accommodated in the first roster point of O.U area. Accordingly he waited for the second roster point for O.Cs of O.U area and opted for M.D.(General Medicine) in Osmania Medical College. It is also contended that petitioners have no *locus standi* to canvass the grievance of others and that it is not established as to specifically how the petitioners are prejudiced.

In the considered view of this Court the point is well taken by the respondents. The petitioners have not established their *locus* to challenge the alleged violations of the Presidential Order nor have they established how they have been prejudiced. No relief is warranted on this issue.

On the above analysis the writ appeal is allowed with the following directions.

A. The award of 5 grace/moderation marks (to all candidates) is declared invalid. The marks so added shall be deleted. A fresh list of qualified candidates for admission to Postgraduate Medical Admissions for the academic session 2006-07 shall be redrawn accordingly. The reviewed list of qualified candidates as above shall be published with such expedition as is warranted in the circumstances;

B. In accordance with mandate of the provisions of the 2006 Rules read with provisions of the 1996 Rules (as analyzed in this judgment), the 6th 31st & 56th points in each roster cycle (of 100 seats) shall be reserved in favour of physically handicapped candidates. The first phase of counselling, (which is stated to have been concluded), shall be revisited/reviewed to ensure that candidates belonging to the physically handicapped class exercise their choice/option of courses in accordance with the roster points earmarked, as above directed.

The registry is directed to place the papers in W.P.No.7467 of 2006 before the Hon'ble the Chief Justice immediately after the summer recess of this Court, for appropriate orders as to expeditious posting of the writ petition for hearing before an appropriate Bench, in view of the urgency. In the circumstances, there shall be no order as to costs.

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GODA RAGHURAM,J

Dated. -05-2006

PVSN/*TSNR/PVKS

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M.VENKATESWARA REDDY,J